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In re Application of O'DWYER
Application No.: 10/522,009
PCT Application No.: PCT/AU02/01504
Int. Filing Date: 11 November 2002
Priority Date Claimed: 19 November 2001
Attorney Docket No.: 7081P005
For: BELT-FED MACHNE GUN

: DECISION ON PETITION
: UNDER 37 CFR 1.137(b)

Applicants' "Petition For Revival Under 37 CFR 1.137(b)," filed in the United States Patent and Trademark Office on 14 January 2005 is GRANTED.

BACKGROUND

On 11 November 2002, applicants filed international application PCT/AU02/01504. The international application claims a priority date of 19 November 2001 and designates the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 May 2003. The deadline for paying the basic national fee in the United States is thirty months from the priority date, that is 19 May 2004. The application became abandoned at midnight 19 May 2004 for failure to pay the national basic fee.

On 14 January 2005, applicants filed the instant petition for revival accompanied by, *inter alia*, a transmittal letter for entry into the US national stage under 35 U.S.C. 371, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application as required by 35 U.S.C. 371(c)(2), an executed declaration as required by 35 U.S.C. 371(c)(4), and the petition fee of \$1500.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply, (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (3) the petition fee required by law, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995). A payment of the basic national fee constitutes a proper reply for entry into the national stage.

Applicant's statement in the petition that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirements of 37 CFR 1.137(b)(3). The submission of the national fee and the copy of the international application satisfies 37 CFR 1.137(b)(1). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). A terminal disclaimer is not required because the application was filed on or after 08 June 1995. Therefore, the requirements for a grantable petition under 37 CFR 1.137(b) have been satisfied.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED** as to the National Stage in the United States of America.

Applicant has satisfied the requirements under 35 U.S.C. 371.

The application has an international filing date of 11 November 2002 under 35 U.S.C. 363 and a date of 14 January 2005 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4). The application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing.


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